THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.20157 of 2007

Date : 27-12-2007

Between :

Vuruma Kumara Veerabhadra Rao
@ Peda Veerabhadra Rao .. Petitioner

And

The Commissioner, Endowments Department,
Tilak Road, Boggulagunta,
Abids, Hyderabad
and others ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.20157 of 2007

ORDER:-

Heard the Counsel.

2. This Court ordered *notice before admission* on 24-9-2007 and issued *rule nisi* on 11-12-2007.

3. The writ petition is filed for a Writ of Mandamus declaring the action of the official respondents of the Endowment Department in not taking steps for evicting the 5th respondent from his illegal occupation of the cultivable agricultural land, an extent of Ac.4.00 cents situated in S.No.308 and Ac.1.00 cents situated in S.No.254/G of Bodavadamandagunta village of Paruchuru Mandal of Prakasam District which was donated in the name of Gods of the temples belonging to the 4th respondent inspite of the petitioner's representation is arbitrary, improper and illegal and consequently directing the respondents to take steps to evict the 5th respondent from his illegal occupation of the

4th respondent Temple lands and recover the money earned by him from the lands since 1987 onwards and pass such other suitable orders.

4. R.4 and R.5 filed counter affidavits.

5. In the affidavit filed in support of the Writ Petition, it is stated that *there is a composite temple in the village Upputur of Paruchur Mandal of Prakasam District namely, SRI AMARESWARA SWAMY, SRI VEERABHADRA SWAMY & SRI PADAMBIKA DEVI temple and that it is registered temple under the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (in short, hereinafter would be referred to as 'the Act' for the purpose of convenience). It is also stated that sometime prior to the year 1930, one of the forefathers of the petitioner namely Sri Vuruma Siva Sankara Rao donated Ac.4.00 of cultivable agricultural dry land to the temple from out of the undivided joint property. It is further stated that prior to the year 1945, a family bearing "Pinupa" as surname, donated Ac.1.00 of cultivable agricultural dry land to the above said temple. Further it is also stated that now, unfortunately, the above said total Ac.5.00 agricultural dry land donated to the temple is not in the possession of Andhra Pradesh Endowments Department and the said land has been under illegal and*

unauthorized possession of petitioner's cousin, who too bears the same name of petitioner and who is the 5th respondent herein. It is also further stated that as per Section 38 of Hindu Religious Endowments Act (Madras Act II of 1927), as amended by Act V of 1944, the then Board of Commissioners for Hindu Religious Endowments, Madras, called for and obtained registers of Assets of all temples in the State in the year 1945 and that the Office of the Board of Commissioners, Madras, vide its Board's Order No.3548, dt.7-11-1945, communicated the approved Register of Assets in respect of SRI AMARESWARA SWAMY, SRI VEERABHADRA SWAMY & SRI PADAMBIKA DEVI TEMPLE, Upputur village.

6. It is also stated by the petitioner that *in the Approved Assets Register of the said temple:*

(i) under item No.1, 2 & 5, in page No.4 & 5 of the said Approved Assets Register of the temple, a total land of 66.99 acres is in the possession of the Endowments Department and the Archakas.

(ii) Under item No.3 in page No.4 & 5 of the same Register, it was clearly recorded that Sri Vuruma Siva Sankara Rao donated a dry agricultural land of extent of Ac.4.00 bearing survey No.308 in Boadavada Mandagunta village, against patta No.403 in the name of the Gods, in the temple, for the purpose of Nitya Aganda Deparadhana at the idols of the Gods

in the temple.

This land of Acs.4.00 has been under illegal and unauthorized encroachment with Sri Vuruma Kumara Chinna Veerabhadra Rao, S/o.Venkata Rao, native of Upputur village, 5 to the respondent herein.

(iii) That under item No.4 in page No.4 and 5 of the same Asset Register, it was clearly recorded that the family bearing Surname, PINUPA, donated dry agricultural land of extent Ac.1.00 bearing Survey No.254-2B, in Bodavada Mandagunta village against patta No.3, in the name of the GODS in the temple for the purpose of performing USTAVAMS in the temple.

This land of Ac.1.00 has been under illegal and unauthorized encroachment with the 5th respondent herein.

7. It is also averred by the petitioner that *as per the information available in page No.2 of the Asset Register of the temple, Sri Vuruma Kuma Veerahadra Rao, the grand father of the petitioner was the trustee of the temple from 1-6-1927 who died sometime before 1930. Further it is stated that the next trustee, from about 1930, the father of the 5th respondent holding illegal and unauthorized possession of the above Acs.5.00 of temple land. It is also averred that the subject temple was taken over by*

A.P. Endowments Department in about 1955 and the father of the 5th respondent was continued as Trustee by periodical extensions of his tenures, till the Endowments Department of the Government of Andhra Pradesh abolished the Trustee posts in the year 1985. It is also further stated that the father of the 5th respondent died in March/April, 1987 and as such he seized to be trustee of the said temple right from 1985 itself i.e., two years prior to his death. Further it is stated that it was the father of the 5th respondent who prepared the Temple's Assets Register as called for by the then Government in 1945 and that he recorded in the Register in the items pertaining to the subject lands that both Ac.4.00 and Ac.1.00 were under the possession of the Trustee and that it could have been better had he handed over the Ac.5.00 of temple land to Endowments Department when he seized to be Trustee. Further it is stated that the donors, understandably, gave the land not to the Trustee nor his successors nor his family members, but to the temple, with utmost devotion and dedication towards the Gods for sacred purposes like carrying out Tirunals, Kalyanams, Poojas etc., and also for proper upkeep and maintenance of the premises and super structures of the temple. It is also stated that the donors donate to temples

with the expectation and belief that their donations would properly be utilized for the purposes of the temples so that they could be graced with salvation. But, unfortunately, the high value donations of petitioner's grandfather and others are not in the hands of the temple or Endowments Department, but are encroached, resulting in un-fulfillment of the desires of donors and depriving the donors of their hoped salvation.

8. It is also averred by the petitioner that *the 5th respondent who is a native of Upputur village is in Government Service as Village Assistant of Subbareddipalem, Inkollu Mandal of Prakasam District, inherited all the properties of his father, who was Trustee till abolishment of Trustees, along with Ac.5.00 of temple land, in the year 1987 and also further averred that the 5th respondent ever since 1987 till now i.e., for 20 years, neither handed over the temple land to the Endowments Department, nor did he ever spent even a single rupee for any purpose in respect of the said temple. Further it is averred that more over the 5th respondent has mortgaged the said lands for his own needs.*

9. It is also further averred by the petitioner that *as a native of the village and as a person interested in the temple and as a devotee carrying out Utsavams and*

functions, he made several oral and written representations to the respondent- Endowments Department but in vain and that finally, on 14-3-2007, he issued a registered legal notice to the respondents No.1 to 4 to take necessary steps against the 5th respondent and take possession of the said lands to save the properties of the temple in order to fulfill the devotee donors. But till this day no action has been taken by the official respondents in protecting the lands from the illegal occupation of the non-official respondents and that it shows that the official respondents and the non-official respondent are colluded and thus the Endowments Department has failed in its statutory duty of protecting the assets of the temple. In such circumstances, the writ petitioner approached this Court praying for the appropriate reliefs specified above.

10. In the counter affidavit filed by R.4, the Manager, Endowments Department, Sri Amareswara Swamy, Sri Veerabhadra Swamy and Sri Pedambika Devi temples, Paruchuru group of temples, Paruchuru, Prakasam District, it is stated that *it may be true that the 5th respondent is enjoying the land donated by his ancestors, but it is not correct to say that the concerned officials are not taking action to evict the 5th respondent and also*

stated that the Manager of the temple had issued legal notice dt.8-4-2007 to the 5th respondent directing him to handover possession of the land in question measuring Ac.4.00 in S.No.296 and Ac.1.00 in S.No.308. Further it is stated that the 3rd respondent directed the 4th respondent to take legal action against the 5th respondent for eviction duly consulting the Departmental Advocate and Report. Further it is averred that it is a fact that the ancestors of the petitioner and Pinapa varu donated the land to the temple and that the entire land of Ac.5.00 cents is in possession of the 5th respondent. It is also averred that it is a fact that the property Register was approved by the then Hindu Religious Endowments Board of Madras under Section 38 of the Act. Further it is averred that the management of the temple was in the hands of Sri Varuma Venkata Rao, the father of the 5th respondent and that Sri Varuma Venkata Rao, during his tenure of office as Trustee, kept the land in his possession and utilized the income derived on the land to the purpose for which the land was donated and that after his demise, his son, 5th respondent, enjoying the land without utilizing the income to the temple, against the wishes of the donor. Further it is stated that it is true that Sri Varuma Venkata

Rao, father of the 5th respondent, prepared the property Register and got it approved by the Hindu Religious Endowments Board of Madras and he himself mentioned that the land in question was in possession of the Trustee. Sri Vuruma Venkata Rao, who managed the temple, failed to handover the possession of the land to the appointed Executive Officer of the temple and that later after his demise also his son i.e., the 5th respondent herein did not hand over the possession to the Executive Authorities of the temple in office and enjoying the property unauthorizedly. The 5th respondent is enjoying the property from 1987 and never spent any income to the temple and he never acted as Trustee to the temple and that he is enjoying the said lands unauthorizedly and as an encroacher without spending even a single pie to the temple and also stated that the 5th respondent is working as Village Assistant. Further it is stated that it is true that the petitioner has got issued a registered notice to the Department officials to take action to restore the land to the temple by evicting the 5th respondent from the land and also stated that on the said notice action has been initiated by the 3rd respondent and issued directions on 12-6-2007 to the present Manager of the temple to take

legal action against the 5th respondent and a legal notice has been already issued by the Manager to the 5th respondent. Further it is stated that the Manager has written a letter dt.21-9-2007 to the Assistant Commissioner, Endowments, seeking further directions in the matter and informed that he had taken charge only on 8-8-2007. Further it is stated that action will be taken promptly under Section 83 of the Act 30/87 for evicting the respondent No.5, from the temple lands and lease out the lands in public auction at an earliest.

11. In the counter affidavit filed by the 5th respondent, it is stated that *the subject matter lands of this Writ Petition are their personal and ancestral properties in which the writ petitioner demands a share to him though he is otherwise entitled to and that the petitioner tried his level best in the village to knock away the said lands by attempting to forcibly trespass into the lands and that this respondent resisted the same and the villagers also chastised and warned the petitioner not to create such senses and also stated that all the while he was in service elsewhere and in the recent times after his retirement, he came back to the village and started such mischievous and greedy acts. Further it is stated that when the petitioner failed in his attempts to grab his lands, he*

resorted to mud-slinging activity against him and also further stated that as a part of it, in the newspapers, he started giving false statements that he had been illegally squatting on the lands by falsely stating that the lands are Endowment lands and for that purpose, he has been giving distorted versions to the Media and also to the Endowments Department. Further it is stated that the Endowments Department also found that there is no truth or strength in the allegations of the petitioner and hence did not find it necessary to initiate any proceedings against him since those lands are his personal lands and that the petitioner had been giving paper statements persistently throwing mud against him and defaming his family. It is also stated that it is absolutely false to state that he is in illegal encroachment and enjoyment of the lands allegedly donated by the ancestors of the petitioner and also stated that the allegations in para 3 of the writ affidavit are totally false and are invented for the purpose of this Writ Petition. It is further averred that it is false to allege that some time prior to 1930 one of the forefathers of the petitioner by name Vuruma Siva Sankara Rao donated 4 acres of cultivable land from out of the joint family property and also stated that it is false to alleged that the said 4 acres of land is in his unauthorized possession. Further it is stated that the said Siva Sankara

Rao is the younger brother of his grandfather Vuruma Kumara Veerabhadra Rao and both of them are the sons of Narayanappa and the said extent of 4 acres of land in Sy.No.308 of Bodavadamandagunta village was the joint family property and that the said Narayanappa has two sons Veerabhadra Rao and Sivasankara Rao and the family of Narayanappa has got substantial property in the village. It is also stated that after the death of Narayanappa, his son, the said Kumara Veerabhadra Rao and Sivasankara Rao continued to be joint without effecting any partition and that the said Kumara Veerabhadra Rao is his paternal grandfather who died prior to 1920. Further, the said Kumara Veerabhadra Rao and Siva Sankara Rao also died without dividing the joint family properties. It is also stated by the 5th respondent that thereafter, their respective sons viz., his father Venkata Rao, his brother Narayanappa representing Kumara Veerabhadra Rao branch, and the son of Sivasankara Rao by name Chandra Mouli, orally effected partition of the joint family properties during the year 1941 and that in the said partition, the said 4 acres of land in Sy.No.308 fell to the share of his father Venkata Rao and thus the said land is also his ancestral property and that all the revenue records also show the same. Further it is

stated by the 5th respondent that it appears the said Sivasankara Rao when he was joint with his grandfather Kumara Veerabhadra Rao, made an oral arrangement directing their joint family members to supply edible oil for the purpose of Akhanda Deeparadhana to the subject matter temple from out of the income derived from the said 4 acres of land covered by Sy.No.308 and that as stated by the writ petitioner himself, by that time, all the properties were joint and undivided and as such, the said Sivasankara Rao was not competent to alienate any joint family property. In any case, the said Sivasankara Rao did not execute any deed of conveyance in favour of the said Devasthanam at any time, much less, any gift deed and that he was a mom of religious inclinations and used to spend all his time for religious rituals and also stated that due to that he directed his family members to continue to supply edible oil for Akhanda Deeparadhana in the said temple as a family tradition. It is also stated that the entries in Section 38 Register, vide Board Order No.3548/45 dated 7-11-1945 relied upon by the writ petitioner also does not show that any conveyance deed was made by the said Sivasankara Rao and that it is pertinent to note that so far as the other item of Ac.1.00 cents of land covered by Sy.No.254/2B is concerned, in

the same Register it was stated that that the said Pinupa people conveyed the same by way of a gift deed and that the land was in the possession of the Trustees and further it is stated that whereas in the same Register, the entry relating to their lands, there is no mention of any conveyance deed conveying the said land to Devasthanam. Further more, it was also stated that the land was still in the possession of the family of Sivasankara Rao. Further it is stated that it appears by that time the said Sivasankara Rao, because of his religious attitude, made an oral arrangement directing their family to supply edible oil out of the income derived from the said land, without alienating the same to the Devasthanam. Accordingly, their family made it as a tradition to use part of the income derived from the said land, to supply edible oil to the Devasthanam for Akhanda Deeparadhana and that this tradition came to settle with their branch since his father was the eldest of his brothers and thus, it cannot be stated that this land was conveyed or in any way belongs to the Devasthanams. Further it is stated that it is true that the grandfather of both of them also acted as a Trustee vide the orders of the Endowments Board as stated in the said Register and thereafter, his father Venkata Rao became the Trustee by the date of the said Board order dated 7-11-1945 and that

he acted as such as its hereditary trustee till he died in 1987 and that during his life time and after him, he had been supplying the oil to the temple, presently at the rate of 36 Kgs., per annum in accordance with their family tradition. Further it is also stated that since his father acted as hereditary trustee for about five decades, he also supplied oil and also used to meet the expenditure for the performance of the annual functions of the temple with the income derived from the 1 acre of land in Sy.No.254/2B conveyed by Pinupa people having been in possession of the same. Thus, only the said one acre of land situated in Sy.No.254/2B is the land of the temple, the income of which they have been using for the purpose of annual functions without taking a single pie out of it for them. It is also averred that he had absolutely no objection to set apart the said one acre of land in Sy.No.254/2B if a legal, capable and efficient Board is constituted who can meet the expenditure of performing the annual functions of the temple and that for all these years, he spent all the income derived from the 1 acre of land in Sy.No.254/2B to the temple as its hereditary trustee. Further it is averred that he is the only to his father Venkata Rao and that they effected an oral partition of theirancestral properties and subsequently during 1984 prepared a list of partition

recording the earlier oral partition under which the said 4 acres of land along with the remaining land in the same survey number belonging to their family, which came to a total of Ac.5-22 cents which in the revenue records measured as Ac.5-06 cents, was partitioned amongst both of them equally. The said memo of past partition was very much signed by the writ petitioner as a witness to it on 1-1-1984 and as such, now the writ petitioner cannot say otherwise. Subsequently, his father executed a registered will dated 30-5-1985 in which his share in the said Ac5-22 cents of the land was also bequeathed to him and he was directed to give 3 kgs., of oil per month totally 36 kgs per annum to the respective Archakas of the temple out of the income derived from the said land. Subsequently, his father executed another unregistered will canceling this particular will in which the same bequest and arrangement were reiterated as in the earlier registered will. These documents clearly show that the said land of 4 acres is not Devasthanam land. It is further stated that so far as the 4 acres of land in Sy.No.308 is concerned, it does not belong to the temple and it is his absolute property. Several other averments also had been made in the counter affidavit.

12. As can be seen from the respective stands taken by the parties, there appears to be some controversy relating

to the actual extent of the land owned by the Institution in pursuance of the donation and the rest of the extent of the land and also there appears to be some controversy whether the rest of the extent of land in fact belongs to the Institution or not. This Court is not inclined to express any opinion relating to the said aspect in the light of the factual controversy put forth by the parties before this Court. It appears to be a dispute between the petitioner and the 5th respondent predominantly. However, the 4th respondent had taken a specific stand that the total subject matter of the Writ Petition had been donated to the Institution and the Institution is the owner of the total extent of the property – the subject matter of the present Writ Petition. In the light of the stands taken, especially the stand taken by the writ petitioner in the affidavit filed in support of the Writ Petition, the stand taken by the 4th respondent and also the stand taken by the 5th respondent, this Court is of the considered opinion that it would be just and proper to direct the Assistant Commissioner, Endowments Department, Ongole, Prakasam District – 3rd respondent to look into the respective grievances put forth by the petitioner and the 4th respondent and the 5th respondent and take appropriate decision in this regard. It is needless

to say that the contesting parties are at liberty to produce all the material available before the 3rd respondent and let the 3rd respondent take appropriate decision in this regard, within a period of three months from the date of receipt of a copy of this order. In the event of the 3rd respondent being satisfied that the properties belong to the Endowments Department, further steps in accordance with law to be taken.

13. The Writ Petition is disposed of accordingly. No order as to costs.

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Justice P.S.Narayana

27th December, 2007

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